

The Administrative Law Judge denied claimant ongoing benefits finding that claimant's current symptomatology did not stem from the accidental injury suffered with

respondent on April 15, 1994. This matter has been heavily litigated both before the Administrative Law Judge and, on one previous occasion, before the Appeals Board. At that time claimant's injuries were found to arise out of and in the course of claimant's employment, based upon the medical opinions of the treating doctors.

Since then claimant has developed additional symptomatology including radiculopathy into his lower extremities. Respondent contends claimant originally suffered injury to his right shoulder and right hip. The spinal stenosis and spondylolisthesis in his lumbar spine did not become symptomatic until nearly a year after claimant's date of injury. Dr. Anthony Pollock found claimant's symptoms to either be related to claimant's injury or not related to claimant's injury depending upon when claimant first exhibited symptoms in the low back and right leg. Dr. Pollock acknowledged claimant's spondylolisthesis at L4-5 had been present for many years. The timing of the onset of claimant's complaints was, in Dr. Pollock's mind, the deciding factor as to whether this spondylolisthesis was aggravated by claimant's fall or whether it was simply a progression of claimant's ongoing condition.

Dr. Ernest Schlachter, testifying on behalf of respondent, found that claimant's spondylolisthesis and spinal stenosis were not related to claimant's work-related injuries, being a natural progression of claimant's degenerative disease process. A review of the medical records attached to the preliminary hearing fails to uncover complaints by claimant about the low back and leg until May 1995. This is some 13 months after the April 15, 1994 date of injury. The medical controversy between Dr. Schlachter and Dr. Pollock appears to hinge on when claimant first alleged complaints of pain to the low back and leg. Based upon the evidence presented in the record, it appears claimant's symptomatology to the low back and leg did not arise until over a year after the fall. Dr. Schlachter finds this not to be compensable. Also, in Dr. Pollock's January 23, 1996 letter, he discusses the lack of complaints in the low back and leg for a year after the injury. He opined that it would be extremely unusual for these symptoms to stem from the fall in April 1994 with the symptomatology not presenting itself until 1995.

Based upon the evidence presented the Appeals Board finds, for preliminary hearing purposes, claimant's ongoing symptomatology from his spondylolisthesis and spinal stenosis at L4-5 does not stem from the injury occurring on April 15, 1994. As such, Judge Clark's Order terminating claimant's ongoing benefits should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge John D. Clark dated April 16, 1996, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of June 1996.

BOARD MEMBER

c: David H. Farris, Wichita, KS
Eric K. Kuhn, Wichita, KS

Steven L. Foulston, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director